

STAT

Approved For Release 2005/12/05 : CIA-RDP82M00345R000700010031-4

Approved For Release 2005/12/05 : CIA-RDP82M00345R000700010031-4

Department of Justice  
Washington, D.C. 20530

JUL 6 1976

Anthony A. Lapham, Esquire  
General Counsel  
Central Intelligence Agency  
Washington, D.C. 20505

Dear Mr. Lapham:

This is in response to your letter of June 8, 1976, requesting my opinion as to the possible effect of Executive Order 11905 and 18 U.S.C. § 2511 on the use by CIA in the United States of audio countermeasures (ACM). It is my opinion that the use of ACM in the manner described in the memorandum of June 1, 1976, to you from the Director of Security would not violate either of these provisions.

Electronic surveillance is defined in the Executive Order as:

acquisition of a non-public communication by electronic means, without the consent of a person who is a party to, or, in the case of a non-electronic communication, visibly present at, the communication.

Sec. 5(a)(3). The Order specifically states that CIA "shall not perform electronic surveillance within the United States," except for the purpose of testing equipment. Sec. 5(b)(2). In our view, this prohibition against the "perform[ance]" of electronic surveillance must reasonably be interpreted to relate to activities the purpose of which is the acquisition of non-public communications



Approved For Release 2005/12/05 : CIA-RDP82M00345R000700010031-4  
by electronic means without the consent of a party there-  
to. That is, it should not be read to prohibit activity  
which in fact has an altogether different purpose, but  
which incidentally and beyond the control of CIA does  
acquire some non-public communications. To construe  
Section 5(b)(2) in that fashion would virtually prohibit  
the use of an ordinary telephone, because of the not un-  
common occurrence of crossed lines. As we understand,  
in the use of ACM there is no intent to acquire non-public  
communications without the consent of a party, and the  
incidental acquisition of such communications is in fact  
a hindrance.

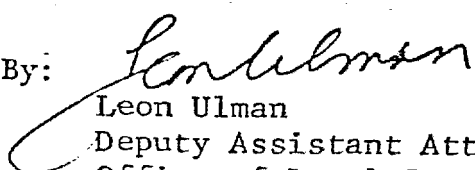
Of course if the ACM operation were to discover a  
"bug" in the process of transmission, it could be viewed  
as intentionally acquiring a non-public communication.  
I presume, however, that the persons whose facilities are  
being "swept" have consented to such sweeps, and the  
acquisition of their non-public communications being trans-  
mitted by the "bug", being consensual, would not consti-  
tute electronic surveillance within the definition of  
Section 5(a)(3) of the Executive Order.

With respect to the effect of 18 U.S.C. § 2511:  
I believe, for the same reasons as were pertinent to  
the prohibition of the Executive Order, that that section  
does not bar the use of ACM by CIA in the United States.  
In addition, I believe the use of ACM could reasonably  
fall within the reservation of Presidential power in 18  
U.S.C. § 2511(3), so that the prohibitions of Chapter 119,  
Title 18, United States Code, would not apply.

Sincerely,

Antonin Scalia  
Assistant Attorney General  
Office of Legal Counsel

By:

  
Leon Ulman  
Deputy Assistant Attorney General  
Office of Legal Counsel

- 2 -

25X1

Approved For Release 2005/12/05 : CIA-RDP82M00345R000700010031-4

Next 1 Page(s) In Document Exempt

Approved For Release 2005/12/05 : CIA-RDP82M00345R000700010031-4

OLC 76-1913

OGC 76-3775

8 July 1976

MEMORANDUM FOR: Deputy Director for Administration  
Deputy to the DCI for the Intelligence Community  
Legislative Counsel  
Director of Security

SUBJECT: Audio Countermeasures

1. I am attaching a memorandum dated 6 July 1976 from the Department of Justice on the subject of CIA audio countermeasure activities. The essential message is that such activities, as described in the memorandum to me from the Director of Security dated 1 June 1976, do not violate any statutory or Executive order prohibition relating to electronic surveillance. You should note, however, that the attached memorandum reflects an assumption, which I share, that our audio countermeasure activities have the prior consent of the persons who control the facilities being "swept."

2. The attached memorandum may be of broad interest within the Intelligence Community, since what goes for the CIA should go for the other agencies as well.

3. The Office of Legislative Counsel may want to touch base with Frank [redacted] in view of the interest in this problem that has been expressed by [redacted] 25X1

[redacted]  
ANTHONY A. LAPHAM  
General Counsel

Attachment

MEMORANDUM FOR: General Counsel

THROUGH : Deputy Director for Administration

FROM : Robert W. Gambino  
Director of Security

SUBJECT : CIA Audio Countermeasures Within the United States

1. The term "Audio Countermeasures" (ACM) is defined to mean all the procedures employed by Office of Security specialists to determine if CIA facilities, installation premises, certain residences or personnel are subject to hostile electronic surveillance. It includes the examination and analysis of telephone and intercommunication systems (instruments, terminals, frames, lines and electronics); telephone and power transmission lines including searches for carrier current devices; all signals appearing in the radio frequency spectrum and procedures for detecting optical surveillance systems including laser, light emitting diodes and closed circuit TV. For the purposes of ACM, the radio frequency spectrum is defined in accordance with the Fourth Edition of "Reference Data for Radio Engineers" and "Frequency Allocations 10 KHz to 275 GHz" published by RCA Frequency Bureau, RCA Corp., 15 July 1973.

Band			
Number	Frequency Range	Metric Subdivision	Frequency Subdivision
4	3 to 30 KHz	Myriametric Waves	VLF
5	30 to 300 KHz	Kilometric Waves	LF
6	300 to 3000 KHz	Hectometric Waves	MF
7	3 to 30 MHz	Decametric Waves	HF
8	30 to 300 MHz	Metric Waves	VHF
9	300 to 3000 MHz	Decimetric Waves	UHF
10	3 to 30 GHz	Centimetric Waves	SHF
11	30 to 300 GHz	Millimetric Waves	EHF
12	300 to 3000 GHz or 3 THz	Decimillimetric Waves	

25X1

CONFIDENTIAL

2	IMPDET CL BY
---	--------------

25X1

Approved For Release 2005/12/05 : CIA-RDP82M00345R000700010031-4

Next 2 Page(s) In Document Exempt

Approved For Release 2005/12/05 : CIA-RDP82M00345R000700010031-4